

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEENAN G. WILKINS,)	No. C 10-3090 LHK (PR)
)	
Plaintiff,)	ORDER GRANTING
)	DEFENDANTS' MOTION FOR
v.)	SUMMARY JUDGMENT
)	
COUNTY OF ALAMEDA, et al.,)	
)	
Defendants.)	

Plaintiff, a pretrial detainee proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 against employees of Alameda County. In his amended complaint, Plaintiff alleges that Defendants violated his fundamental right to vote and his right to due process and equal protection, and conspired with each other to do so. Defendants have moved for summary judgment. Plaintiff has filed an opposition, and Defendants have filed a reply.¹ Having carefully considered the papers submitted, the Court hereby GRANTS Defendants' motion for summary judgment, for the reasons set out below.

BACKGROUND

The following facts are taken in the light most favorable to Plaintiff, and are undisputed unless otherwise indicated.

¹ Defendants' unopposed request for judicial notice and supplemental request for judicial notice are GRANTED.

1 Plaintiff alleges that while he was a pretrial detainee at the Santa Rita Jail in Alameda
2 County, Defendants denied him the right to vote in three consecutive elections in 2008, 2009,
3 and 2010. (Compl. at 3.) After several of Plaintiff's requests to inmate services regarding
4 initiating steps to register as a voter were ignored, and realizing that the deadline to register was
5 October 20, 2008, Plaintiff filed an emergency grievance. (Compl. Addendum at 2.) On
6 October 9, 2008, Plaintiff was given a registration form. (*Id.*) However, the registration form he
7 was given was a form to register as a permanent absentee voter, which Plaintiff did not want.
8 (*Id.*) Nonetheless, after receiving no information as to why he received that particular
9 registration form, Plaintiff completed the form and gave it to Defendant Deleon for mailing. (*Id.*
10 at 3.)

11 One week later, Plaintiff received his completed form back from Defendant Deleon, and
12 neither one knew why the form had been returned. (*Id.*) On the registration deadline, Plaintiff
13 gave the registration form to Defendant Tafolla to place in the outgoing mail. (*Id.*) A few hours
14 later, because no one could find the form that Plaintiff had given to Defendant Tafolla, Plaintiff
15 had to fill out a new form. (*Id.*) On October 30, 2008, Defendant Deleon passed out the
16 incoming mail and gave Inmate Menefee a ballot form with instructions as to the deadline date
17 for turning it in. (*Id.* at 3-4.) Plaintiff and several other inmates did not receive ballot forms.
18 (*Id.* at 4.) On November 4, 2008, Plaintiff was unable to vote, nor was he provided a ballot.
19 (*Id.*) Plaintiff complained to Sheriff Ahern and other staff regarding his inability to vote, as well
20 as the lack of jail policies and procedures provided to assist inmates in the voting procedure.
21 (*Id.*)

22 On February 27, 2009, Plaintiff spoke with Defendant Lolita Francisco, a supervisor at
23 the County Registrar, and complained about his inability to vote, and the problems he was
24 experiencing at the jail. (*Id.*) After the Supervisor gave him more information regarding what
25 information the jail should have, Plaintiff did not hear from her again despite her assertion that
26 she would contact his family. (*Id.* at 5.) Plaintiff wrote to the head of the County Registrar,
27 complaining about the denial of his right to vote, and the problems he was experiencing at the
28 jail. (*Id.*) Plaintiff then received a letter from another supervisor at the County Registrar,

1 directing him to request a vote-by-mail ballot. (*Id.*)

2 Plaintiff planned to vote on the May 19, 2009 election day. (*Id.* at 6.) However, Plaintiff
3 believed he had not registered yet and submitted another registration form to fill out. (*Id.*) He
4 never received a receipt and as election date loomed closer, Plaintiff submitted a grievance
5 complaining that he had not yet received a ballot. (*Id.*) On election day, Plaintiff was not
6 provided a ballot, and therefore, could not vote. (*Id.*) On August 18, 2010, Plaintiff received a
7 letter from the head of the County Registrar, letting him know that the office sent a vote-by-mail
8 application to Plaintiff, but on April 9, 2009, it was returned as undeliverable. (*Id.* at 5, 6-7.)

9 In April 2010, Plaintiff complained that the jail was violating state regulations, and that
10 no information was being provided regarding upcoming elections. (*Id.* at 8.) He completed an
11 application to vote by mail, and gave it to Defendant Firmeza to mail. (*Id.* at 9.) When the
12 deadline for submitting a vote by mail neared, and Plaintiff had not yet received any ballot form,
13 he filed another grievance. (*Id.* at 10.) Plaintiff never received a ballot, and was unable to vote
14 on the June 8, 2010 election day. (*Id.*) Plaintiff received a letter in July 2010 from Defendant
15 Francisco indicating that because the Registrar did not receive Plaintiff's ballot prior to the June
16 1, 2010 deadline, he was unable to vote by mail. (*Id.*)

17 ANALYSIS

18 A. Standard of Review

19 Summary judgment is proper where the pleadings, discovery and affidavits demonstrate
20 that there is "no genuine issue as to any material fact and that the moving party is entitled to
21 judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect
22 the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute
23 as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
24 verdict for the nonmoving party. *Id.*

25 The party moving for summary judgment bears the initial burden of identifying those
26 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine
27 issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). Where the moving
28 party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no

1 reasonable trier of fact could find other than for the moving party. But on an issue for which the
2 opposing party will have the burden of proof at trial, as is the case here, the moving party need
3 only point out “that there is an absence of evidence to support the nonmoving party’s case.” *Id.*
4 at 325.

5 Once the moving party meets its initial burden, the nonmoving party must go beyond the
6 pleadings and, by its own affidavits or discovery, “set forth specific facts showing that there is a
7 genuine issue for trial.” Fed. R. Civ. P. 56(e). The Court is only concerned with disputes over
8 material facts and “factual disputes that are irrelevant or unnecessary will not be counted.”
9 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is not the task of the Court to
10 scour the record in search of a genuine issue of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279
11 (9th Cir. 1996). The nonmoving party has the burden of identifying, with reasonable
12 particularity, the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to
13 make this showing, “the moving party is entitled to judgment as a matter of law.” *Celotex Corp.*,
14 477 U.S. at 323.

15 At the summary judgment stage, the Court must view the evidence in the light most
16 favorable to the nonmoving party: if evidence produced by the moving party conflicts with
17 evidence produced by the nonmoving party, the judge must assume the truth of the evidence set
18 forth by the nonmoving party with respect to that fact. *See Leslie v. Grupo ICA*, 198 F.3d 1152,
19 1158 (9th Cir. 1999).

20 B. Plaintiff’s Claims

21 Liberally construed, Plaintiff claims that Defendants denied him the fundamental right to
22 vote, and denied his rights to due process and equal protection. Plaintiff also alleges that they
23 also conspired to violate Plaintiff’s right to vote, due process, and equal protection, in violation
24 of 42 U.S.C. § 1985(3), and relatedly, 42 U.S.C. § 1986. (Compl. Addendum at 1, 9.)
25 Defendant argues that, as a convicted felon, Plaintiff has no fundamental right to vote, and thus,
26 they are entitled to judgment as a matter of law.

27 1. Right to Vote

28 Section 2 of the Fourteenth Amendment expressly provides that the right to vote may be

1 abridged for participation in a crime. This section has been interpreted as allowing a state to
 2 disenfranchise those convicted of a crime, including those who have completed their sentences
 3 and paroles. *See Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). At the time the Supreme Court
 4 decided *Richardson*, the California Constitution and the California Elections Code denied the
 5 right to vote to people who had been convicted of certain crimes.² In *Richardson*, ex-felons, who
 6 had completed their sentences and paroles, filed a writ of mandate compelling officials to
 7 register them as voters, alleging that the disenfranchisement violated their right to equal
 8 protection. *Id.* at 26-27. The Supreme Court held that, unlike any other voting qualification,
 9 felon disenfranchisement laws are explicitly endorsed by the text of the Fourteenth Amendment.
 10 *Id.* at 41-53 (interpreting the provisions of “the less familiar § 2 of the Amendment”). The Court
 11 ruled that California’s statute disenfranchising convicted felons who had completed their
 12 sentences and paroles was not inconsistent with the equal protection guarantee of the Fourteenth
 13 Amendment. *Id.* at 56.

14 Here, Defendants provide evidence that, in 1999, Plaintiff was convicted of four counts
 15 of second degree robbery in state court. (Req. Judicial Notice, Exs. A, B, C.) Plaintiff does not
 16 dispute that he suffers from those 1999 convictions. (Opp. at 4.) Rather, Plaintiff argues that
 17 because he is still challenging those convictions, in *Wilkins v. Ahern*, No. 11-5626 SI (N.D. Cal.
 18 filed November 21, 2011), they are not yet “final.” (*Id.*) However, as the order of dismissal
 19 states in *Wilkins*:

20 [O]nce a state conviction is no longer open to direct or collateral attack in its
 21 own right because the defendant failed to pursue those remedies while they
 22 were available (or because the defendant did so unsuccessfully), the conviction
 23 may be regarded as conclusively valid. . . . If that conviction is later used to
 24 enhance a criminal sentence, the defendant generally may not challenge the
 25 enhanced sentence through a petition under § 2254 on the ground that the prior
 conviction was unconstitutionally obtained.” *Lackawanna County Dist.*
Attorney v. Coss,
 532 U.S. 394, 403-04 (2001). The only exception to the rule barring challenges

26 ² Thereafter, California changed their law to allow those who have completed their
 27 sentences and are released from parole the right to vote. The law currently provides that “[a]
 28 person entitled to register to vote shall be a United States Citizen, a resident of California, not in
 prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the
 next election.” Cal. Elec. Code § 2101 (West 2006).

1 to prior convictions is that a petitioner may challenge a prior conviction used to
2 enhance a current sentence on the ground that there was a failure to appoint
3 counsel in that case in violation of the Sixth Amendment. *Coss*, 532 U.S. at
4 404. That, however, is not the situation here. Wilkins' claim of ineffective
assistance of appointed counsel necessarily shows that counsel was appointed
for him in the 1999 proceedings. The sentence on the 1999 conviction has
concluded and the conviction is no longer open to collateral challenge in federal
court.

5 *Wilkins v. Ahern*, No. 11-5626 SI at 2 (N.D. Cal. January 8, 2012). The Court concludes that
6 because Plaintiff was previously convicted of a felony, and because felon disenfranchisement is
7 explicitly permitted under *Richardson*, 418 U.S. at 55, Plaintiff does not have a federal
8 constitutional right to vote.

9 Plaintiff's argument that Defendants violated his right to vote because Plaintiff was
10 allowed to register, and was eligible to vote under California law holds no merit. Section 1983
11 does not impose liability for violations of duties of care arising out of state tort law. *See*
12 *DeShaney v. Winnebago County Social Servs. Dep't*, 489 U.S. 189, 201-03 (1989). To state a
13 claim, a plaintiff must show a specific constitutional or federal guarantee safeguarding the
14 interests that have been invaded. *See Paul v. Davis*, 424 U.S. 693, 697 (1976). Here, Plaintiff
15 cannot do so.

16 Thus, Defendants are entitled to judgment as a matter of law on the claim that they
17 denied Plaintiff his fundamental right to vote.

18 2. Due Process / Equal Protection

19 As an initial matter, Defendants argue that Plaintiff's due process claim is subsumed in
20 his equal protection claim. The Court agrees. Where a particular Amendment provides an
21 explicit textual source of constitutional protection against a particular sort of government
22 behavior, e.g., the Takings Clause of the Fifth Amendment, that Amendment, not the more
23 generalized notion of "substantive due process," must be used to analyze such claims. *Albright*
24 *v. Oliver*, 510 U.S. 266, 273 (1994) (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989)).
25 Substantive due process does not extend to circumstances already addressed by other
26 constitutional provisions. *See Albright*, 510 U.S. at 273 (constitutionality of arrest may only be
27 challenged under Fourth Amendment); *Fontana v. Haskin*, 262 F.3d 871, 882 & n.6 (9th Cir.

2001) (sexual harassment by a police officer of criminal suspect during seizure is analyzed under Fourth Amendment, whereas sexual misconduct by officer toward another generally is analyzed under substantive due process); *Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000) (substantive due process claim improper when Equal Protection Clause covers racially discriminatory actions alleged), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005). Accordingly, the Court will only address Plaintiff's equal protection claim.

While Defendants argue that Plaintiff has no equal protection claim because Plaintiff has no fundamental right to vote, liberally construed, Plaintiff's argument can be inferred to allege that he was deprived of the statutory benefit of re-enfranchisement that California confers upon those who are no longer imprisoned or on parole because of a felony conviction. *See Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010). "Even a statutory benefit can run afoul of the Equal Protection Clause, though, if it confers rights in a discriminatory manner or distinguishes between groups in a manner that is not rationally related to a legitimate state interest." *Id.* "For instance, a state could not choose to re-enfranchise voters of only one particular race, *see Hunter [v. Underwood]*, 471 U.S. 222, 233 [(1985)], or re-enfranchise only those felons who are more than six-feet tall." (Citations omitted.) *Id.*

Because Plaintiff does not – and cannot successfully – contest that there is a rational basis for California's law restoring voting rights only to felons who have completed their sentences, *see, e.g., Harvey*, 605 F.3d at 1079, Plaintiff's only other challenge must be an "as applied" challenge.

Plaintiff's amended complaint fails to state an equal protection claim on which relief can be granted. Under a rational basis inquiry, in order to prevail on an equal protection claim, Plaintiff must demonstrate that (1) he is similarly situated to others, (2) he is being treated worse than others to whom he is similarly situated, and (3) there is no rational basis for the disparate treatment. *More v. Farrier*, 984 F.2d 269, 271 (8th Cir. 1993). Plaintiff has failed to satisfy any of the three prongs of the rational basis test.

Plaintiff has not alleged facts that he is part of a protected class, or that he is similarly situated to others. *See Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (affirming the

1 district court's dismissal of a Fourteenth Amendment challenge to the constitutionality of an
2 Oregon statute prohibiting felons from voting while imprisoned); *see also Rodriguez v. Cook*,
3 169 F. 3d 1176, 1179 (9th Cir. 1999) (rejecting a prisoner's claim that the PLRA three-strikes
4 provision violates equal protection by treating indigent prisoners differently from wealthy
5 prisoners because neither state prisoners nor indigent persons are a protected class).

6 Plaintiff asserts that he is being treated differently, but does not explain how. Plaintiff's
7 only example of being treated differently is his allegation that, on October 30, 2008, Defendant
8 Deleon gave inmate Mentee a ballot form with a deadline as to when it would be picked up,
9 while Plaintiff and several other inmates did not receive ballot forms. (Compl. Addendum at 3-
10 4.) This is insufficient to "raise a right to relief above the speculative level." *Bell Atlantic*
11 *Corp. v. Twombly*, 550 U.S. 544, 553-56 (2007) (citations omitted). Plaintiff does not state how
12 other pretrial detainees were being treated, how non-pretrial detainee inmates were treated, what
13 happens when other inmates requested registration and ballot forms, etc. In sum, Plaintiff fails
14 to allege what prisoners he is similarly situated to, and how those prisoners are being treated
15 differently than him. Without any evidence to show how Plaintiff is being treated differently, his
16 claim of equal protection cannot survive a motion for summary judgment.

17 Plaintiff's claim is also not cognizable under the "class of one" theory of equal
18 protection. If a plaintiff has facts showing that he "has been intentionally treated differently
19 from others similarly situated and that there is no rational basis for the difference in treatment,"
20 then he may proceed under equal protection as a "class of one." *Village of Willowbrook v.*
21 *Olech*, 528 U.S. 562, 564 (2000). However, again, Plaintiff has failed to state that other inmates
22 are treated differently, and he also fails to specify the classification scheme on which his claims
23 are based.

24 In sum, Plaintiff's allegations fail to state a claim for violation of equal protection. He
25 has failed to state that other inmates are treated differently regardless of class, and he also fails to
26 specify the classification scheme on which he bases his claims. Accordingly, Defendants are
27 entitled to judgment as a matter of law as to Plaintiff's equal protection claim.
28

1 3. Sections 1985(3)

2 Section 1985(3) proscribes conspiracies to deny equal protection of the law or equal
3 privileges and immunities. *Coverdell v. Dep't. of Soc. and Health Svcs., State of Washington*,
4 834 F.2d 758, 767 (9th Cir. 1987). To state a cause of action under Section 1985(3), Plaintiff
5 must allege: (1) a conspiracy, (2) to deprive any person or class of persons of the equal
6 protection of the laws, (3) an act by one of the conspirators in furtherance of the conspiracy, and
7 (4) a personal injury, property damage or deprivation of any right or privilege of a citizen of the
8 United States. *Gillispie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980). An allegation of racial or
9 class-based discrimination is required to state a claim for relief under the second clause of
10 Section 1985(3). *Bretz v. Kelman*, 773 F.2d 1026, 1028-1030 (9th Cir. 1985); *Sever v. Alaska*
11 *Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992).

12 In interpreting these standards, the Ninth Circuit has held that a claim under Section 1985
13 must allege specific facts to support the allegation that defendants conspired together. *Karim-*
14 *Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988). A mere allegation of
15 conspiracy without factual specificity is insufficient to state a claim under 42 U.S.C. § 1985. *Id.*;
16 *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1039 (9th Cir. 1991).

17 Plaintiff has failed to satisfy the requirements of a Section 1985(3) claim. He offers only
18 a broad allegation of conspiracy in relation to the deprivation of equal protection. He does not
19 allege the existence of conspiracy which is racially-motivated or otherwise attributable to
20 Plaintiff's status in a protected class. As such, Plaintiff has failed to state a cognizable claim
21 under Section 1985(3), and Defendants are entitled to judgment as a matter of law.

22 4. Section 1986

23 “Section 1986 authorizes a remedy against state actors who have negligently failed to
24 prevent a conspiracy that would be actionable under § 1985.” *Cerrato v. San Francisco Cmty.*
25 *Coll. Dist.*, 26 F.3d 968, 971 n.7 (9th Cir. 1994). Plaintiff may not pursue a claim for relief
26 under 42 U.S.C. § 1986 unless he has first stated a claim for relief under section 1985.
27 *McCalden v. California Library Assoc.*, 955 F.2d 1214, 1223 (9th Cir. 1992). As noted, Plaintiff
28 fails to offer any evidence to support a claim for relief under Section 1985. Accordingly, there is


1 no dispute of material fact that Defendants are entitled to judgment as a matter of law as to this
2 claim.

3 **CONCLUSION**

4 Accordingly, Defendants' motion for summary judgment is GRANTED. The Clerk shall
5 terminate all pending motions and close the file.

6 IT IS SO ORDERED.

7 DATED: 6/28/12


LUCY H. KOH
United States District Judge